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LEGAL REGIME ON FREEDOM OF SPEECH AND EXPRESSION WITH SPECIAL REFERENCE TO SEDITION LAW UNDER INDIA, THE UNITED KINGDOM, AND THE UNITED STATES OF AMERICA

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Abstract

Freedom of speech and expression is considered the mother of all liberties as it has been recognized as an essence of a free & democratic society, as it is regarded as the first and foremost right in the process of individual self-development. Democracy is extolled because of the freedom of speech and expression present in it. This freedom has been accorded a supreme status in almost all the countries worldwide. The exercise of freedom of speech and expression can only be limited under the procedure established by law. Sedition laws are also among various restrictions that can be imposed to curtail free speech in the interest of public order. Sedition is not mentioned as one of the grounds on which restrictions on the freedom of speech and expression may be imposed. The Study has adopted a doctrinal method of Study and is limited to assessing the legal regime on freedom of speech and expression with special reference to sedition law in India, the United Kingdom, and the United States of America.

Keywords: *Freedom of expression, Sedition, democracy, Sedition under common law*

1.0 INTRODUCTION:

Sedition is an offence against the state which is totally different from offences against public order such as Unlawful assembly and rioting. Section 124- A of the IPC defines the offence of in broad general terms and makes it punishable with imprisonment of life.²

Indian Constitution provides us the Right to freedom of speech and expression. But Sedition Law, is only used to suppress the voice of citizen who criticized the Government and its policies however he had a logical reason behind it? in the name of Nation Security those persons were put behind the bars with charged of Sedition. Many social activists and journalist say that Sedition for him is like sword which always hanging on their head. This one is the major problem with this Section 124-A which is related to Sedition. Misuse of sedition law is increasing which is inconsistent with ICCPR. According to the Government's National Crime Records Bureau, which started collecting specific information on sedition in 2014, that same year 47 cases were registered across the country, 58 people were arrested, and one person was convicted.³ Between 2016 and 2019, the number of cases filed under Section 124-A increased by 160% while the rate of conviction dropped to 3.3% in 2019 from 33.3% in 2016.⁴ Although, Sedition remains a crime in United States, but because of the broad protection of free speech under the First Amendment to the Constitution of United States, prosecutions for sedition are rare in this country. In United Kingdom, the offence of sedition was abolished in 2009 in order to check its abuse of freedom of expression under Human Rights Act, 1998. The argument that England has decriminalized it and hence India should follow the same cannot be entertained because of different circumstances in both the countries. Therefore, in present times in India, it is being argued that it is necessary to seriously debate sedition and its impact on the Fundamental Right of speech and expression of citizens. According to the Gandhi, affection cannot be manufactured or regulated by Law. if a person has any objection regarding to the Government and its policies than he has a full Right to express his view nobody can restrict him by doing so except the restriction laid down by the freedom of speech and expression under article 19(1) (a)

²Prabhash K Dutt, Anti-national or anti-government, what is sedition? Available at: <https://www.indiatoday.in/news-analysis/story/anti-national-or-anti-government-what-is-sedition-1775513-2022-03-04> (last viewed on April 28, 2022).

³ Human rights watch report, available at: <https://www.hrw.org/report/2016/05/24/stifling-dissent/criminalization-peaceful-expression-india> (last viewed on April 28, 2022).

⁴ Available at: https://economictimes.indiatimes.com/news/politics-and-nation/arrests-under-sedition-charges-rise-but-conviction-falls-to-3/articleshow/81028501.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last viewed on April 29, 2022).

of the Indian Constitution. The irony of the Law is in the very fact that it allows for criticism of the Government but doesn't allow truth as its defense. When it is the duty of the People to comment fairly upon the Government how truth could be neglected as defense of the crime. The nature of this crime is vested in the concept of sovereignty and the Authority of it. It is not the Government which is Sovereign and it is the country which is Sovereign. Now when the Government is no more the Sovereign then they don't have the Right to possess the protection against Sedition. The change in circumstances now wants change in Law. The reason for which this Law was made is no more in existence and hence this Law shall go. Other countries have started repealing this Law.

The tussle between the law of sedition and freedom of speech and expression is ever growing to the extent that it has pressurized our governments to review the law of sedition in the twenty first century. Important for the law-making authority to take appropriate legislative mechanism to implement the law in a better way and try to suggest enforcing agency for the better enforcement of law. It is also very important for the student of law, social scientist, besides all these beneficial for the general member of the country. At international level, countries like United Kingdom, have found a solution to the problem of breach of freedom of speech and expression by repealing the law of sedition. United States of America have retained these laws but have widened the scope of freedom of speech and expression by narrowing down the scope of restrictions on free speech and there has been no prosecution for sedition in the twenty first century. On the other hand, India is still continuing with the British legacy of suppressing every form of dissent by use of sedition laws. Law Commissions in this country has recommended the review of law of sedition. Therefor parliament and Judiciary should change the existing law by making better legislation, adjudicating the system in a better way as it violates Article 19(1)(a) of the Constitution of India. The word Sedition has been a word of varying import in English Law, 75 years ago when holding a meeting or taking out a procession was considered Sedition. The term of Sedition is derived from the Latin word Sedition which in roman times meant an Insurrectionary Separation (Political or Military), Dissension, civil Discord, Insurrection, Mutiny. Sedition refers to the writing or uttering of words or doing of acts intended to bring the state into hatred or contempt or to excite disaffection against the established government.⁵ Sedition encompasses all those practices which aim at arising hatred, contempt or

⁵ Rai Bahadur G.K. Roy, Press and Sedition 121(Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd edn., 2013).

disaffection, inducing discontent, stirring up opposition, inciting rebellion, creating public disturbance, promoting disloyalty and public disorder against the sovereign of the government.⁶

Freedom of speech and expression is indispensable for the operation of the democratic system and for self-development and setting up a homogenous egalitarian society. This freedom comes with the freedom to critique, to critique government policies, Government laws and administration. If freedom is the depiction of democracy, informed electorate is its element of survival. A well-informed voter is the foundation of democratic structure. The state cannot prevent open discussion and open expression however hateful to its policies, or criticism of the incapacity of the Government. Merely exciting 'disaffection or bad feelings towards the government' is therefore no ground for restricting the freedom of speech and expression, under Article 19(2). Its belief is necessary for the continuity of the democracy, Criticism is must for the avoiding such democracy not to turn cripple. An old dictum is not to follow blindly. We all live in a democratic country, and we all have the right to speech and right to choose. If we have selected the government then we should also have the right to comment on that Government. This is the essence of the democracy. If the people, the electors would not be having the right to criticize their own representative then there will be no difference left, whatsoever, between a democracy and a monarchy. Ideally there should be no law for the curtailment of freedom of Speech and Expression, but for the sole reason that there cannot be any such thing as absolute or uncontrolled liberty wholly free from restrain for that would lead to anarchy or disorder, we have restriction over freedoms. But these restrictions shall be reasonable. In our Constitution we have been granted right to freedom of speech and expression under Article 19(1) (a), and we also reasonable restriction under Article 19(2). Section 124-A is a substantive provision, which is a reflection of the reasonable restriction enumerated in the Constitution. But the restrictive clauses in clause (2)-(6) are exhaustive and are to be strictly constructed. Though in the Case of Kedar Nath v. State of Bihar, the Supreme Court have saved Section 124-A of the Indian Penal Code from Unconstitutionality by giving it a narrow construction following the view of the federal court in Niharendu v. king emperor and rejecting the interpretation given to it by the privy council in King Emperor v. Sadashiv. But the question remains the same. If we live in a free democratic country, then why should we have such anti- democratic laws?

⁶ Ibid.

Today the law of Sedition in India has assumed controversial importance largely on account of change in the body politic and also because of the constitutional provision of freedom of Speech guaranteed as fundamental right. The recent increase in the number of sedition cases has raised concerns about the validity of such law as a reasonable ground for restricting the valuable right of freedom of speech and expression. The cases of Dr. Binayak Sen and Aseem Trivedi have once again initiated the debate over this draconian law.

2.0 SEDITION IN RESPECT OF FREEDOM OF SPEECH AND EXPRESSION: INDIAN LEGAL PERSPECTIVE

Significance of freedom of speech and expression cannot be understated in a democratic country like India, especially when every form of expression was strangled by the British in the past. In order to deepen their control, the British adopted various measures to suppress expression causing feelings of hostility or ill will against the government established by law in India. One of such measures was the draconian provision of sedition enacted in 1870 by inducting Section 124A to the Indian Penal Code, 1860 (hereinafter referred to as IPC).⁷

The law on sedition was introduced by British in India to smother political dissent and to avoid any possibility of revolt or uprising against the government. The framework of this section was imported from sources like The Treason Felony Act, 1848 (operating in Britain) and the Common Law of Seditious Libel.⁸ The rise in incidents of misuse of this law against human rights activists, journalists and public intellectuals in the country have raised concerns on the continuity of such a law in a democratic country like India.⁹ Whether or not the Law of Sedition is violative of the right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution of India¹⁰ has been a debatable issue ever since the Constitution came into force.

Post-Independence, the members of the Constituent Assembly also debated the issue of inclusion of 'sedition' as a ground of restricting freedom of speech and expression, as it was a part of the Draft Constitution. After deliberations, an amendment was moved in the Constituent Assembly to drop

⁷ Shivani Lohiya, Law of Sedition 1 (Universal Law Publishing, New Delhi, 2014).

⁸ W.R. Donogh, A Treatise on the Law of Sedition and Cognate Offences in British India 4 (Thakker, Spink and Co., Calcutta, 1911). available at <http://archive.org/stream/onlawofsedition00dono#page/n23/mode/2up> (Last visited on May 10, 2022).

⁹ Ibid.

¹⁰ Article 19(1) of the Constitution of India: All citizens shall have the right (a) to freedom of speech and expression.

‘sedition’ from the list of restrictions on freedom of speech and expression.¹¹ On this occasion, highlighting the change needed in interpretation of sedition law brought about by India’s independence, K.M Munshi, a member of Constituent Assembly said, “A line must be drawn between criticism of government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State”.¹²

In 1951, India’s Prime Minister Shri Jawaharlal Nehru expressed his dislike of Section 124A of IPC, by stating that, “this section is highly objectionable and obnoxious, and it should have no place both for practical and historical reasons.” Ironically, the statement was made on the occasion of the First Amendment to the Constitution 1951, which further widened the scope of restrictions on the freedom of speech and expression.¹³

Section 124A of IPC was earlier a part of Macaulay’s Draft Penal Code of 1837-39 as section 113, but, this section did not find place in the final draft of IPC, enacted in 1860¹⁴. James F. Stephens, the architect of the Indian Evidence Act, 1872, stated that the omission of a provision relating to sedition was a result of mistake.¹⁵ Later, sedition was made part of IPC in 1870, when threat was posed by the increasing Wahabi activities between 1863-1870, aimed at reviving Muslim power in India by overthrowing the British.¹⁶ Therefore, IPC was amended to include section 124A of IPC, providing for sedition and continued unamended till 1898.¹⁷ After, the insertion of offence of sedition in IPC, the British tried to further strengthen the law by enacting other statutes to cover the seditious expressions in every form possible. The Dramatic Performances Act of 1876 was passed to keep a check on seditious activities in plays and Vernacular Press Act of 1878, to suppress criticism against British policies in print media was passed.¹⁸

Later, in 1898, an amendment was made in IPC to make changes in section 124A of IPC. This change was necessitated because of the difficulty faced by the judiciary in interpreting the law of sedition, resulting in

¹¹ History of Sedition law in India, available at: <http://www.newsland.com/2016/02/16/a-quick-history-of-sedition-law-and-why-it-cant-apply-to-jnu-kanhaiya-kumar/> (last visited on April 8, 2022).

¹² Ibid.

¹³ Ibid.

¹⁴ Kunal Shah, “Journey of Sedition, Section 124A of the Indian Penal Code: has it lived up its life”? available at: **Error! Hyperlink reference not valid.** (last visited on April 8, 2022).

¹⁵ Supra note 4

¹⁶ Supra note 3

¹⁷ Arvind Ganachari, Combating Terror of law in Colonial India: The law of Sedition and the Nationalist Response in Engaging Terror 56 (Brown Walker Press, 2009).

¹⁸ Ibid.

varying interpretations. The words ‘hatred or contempt’ after the interpretation followed by Justice Petheramin in the Bangobasi case¹⁹ which was the first trial for sedition. Similarly, the word ‘disloyalty’ can be traced to the charge framed by Justice Strachey in the famous Tilak trial.²⁰

The present Section after undergoing above said amendments stands as follows:

Section 124A of IPC– Sedition- ‘whoever by words, either spoken or written or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine’.²¹

Explanation 1- the expression “disaffection” includes disloyalty and all feelings of enmity.

Explanation 2- comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.²²

Explanation 3- comments expressing disapprobation of the administrative or other action of the government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.²³

3.0 SCOPE OF THE OFFENCE OF SEDITION UNDER IPC

The offence of sedition, under Section 124A of IPC, is the doing of certain acts which would bring the government established by law in India into hatred or contempt or create disaffection against it.²⁴ The offence is cognizable, non-bailable, non-compoundable and is triable by the Court of Sessions. It is also a statutory requirement that no court shall take cognizance of the offence of sedition except with the prior sanction of the Central or the State Government, as the case may be.²⁵ The word ‘sedition’ is not an

¹⁹ Queen Empress v. Jogendra Chandra Bose, ILR 19 Cal 35.

²⁰ Queen Empress v. Bal Gangadhar Tilak, ILR 22 Bom 112.

²¹ Section 124A of Indian Penal Code, 1860.

²² Ibid.

²³ Ibid.

²⁴ Bilal Ahmed Kaloo v. State of Andhra Pradesh, 1997 Supreme Today 127.

²⁵ Section 196(1)(a), Criminal Procedure Code, 1973: (1) No court shall take cognizance of-

(a) Any offence punishable under chapter VI or under section 153A, section 295A or subsection (1) of section 505 of the Indian Penal Code (45 of 1860), or

operative part and is a marginal note and does not occur in the main body of the provision.²⁶ To understand the precise scope of Section 124A of the IPC, it is necessary to consider that this section was inserted behind the backdrop of struggle for freedom and to curtail every effort of revolt against the foreign rule.²⁷

4.0 INTERPRETATION OF SEDITION BY JUDICIARY: PRE- AND POST-INDEPENDENCE

The interpretation of judiciary was not uniform till the time the Supreme Court dealt with the provision at length and upheld its constitutional validity in 1962.²⁸ Even after the landmark decision of Supreme Court, the observation made by the Supreme Court has not been followed in true spirit. In the first case in which Section 124A of IPC was attracted²⁹, Sir C. Petheram, C.J. interpreted the word disaffection to be a feeling contrary to affection; in other words, dislike or hatred. The offence of sedition was held to be complete even in the absence of any disturbance.³⁰

Further in a case against Bal Gangadhar Tilak, the court interpreted Section 124A of IPC mainly as exciting 'feelings of disaffection' towards the government, which covered within its ambit sentiments such as hatred, enmity, dislike, hostility, contempt, and all forms of ill-will.³¹

The meaning of 'disaffection' and 'disapprobation' was further clarified by the court as amounting to political alienation or discontent.³² The meaning of the word 'disaffection' was further elaborated to mean 'disloyalty'.³³ The confusion prevailed over the exact meaning of the term 'disaffection' which lead to amendment of IPC in 1898 to include words 'hatred or contempt' along with the word 'disaffection'.

The conflict in the interpretation of Federal Court and the Privy Council further added to the confusion centered around the phraseology used in section 124A of IPC. The Federal Court observed that it is necessary to the offence of sedition that the alleged act of the accused has caused an 'incitement to

(b) A criminal conspiracy to commit such offence, or

(c) Any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

²⁶ D. Gopalkrishna Sastri, *The Law of Sedition in India* 16 (N.M. Tripathi Private Ltd, Bombay, 1964).

²⁷ S.K. Sarvaria, *RA Nelson's Indian Penal Code* 1089 (Lexis Nexis Butterworths, New Delhi, 2008).

²⁸ *Kedar Nath v. State of Bihar*, AIR 1962 SC 955.

²⁹ *Queen Empress v. Jogendra Chandra Bose* ILR (1892) Cal 35.

³⁰ *Ibid.*

³¹ *Queen Empress v. Bal Gangadhar Tilak* ILR (1898) 22 Bom 112.

³² *Queen Empress v. Ramchandra Narayan* ILR (1898) 22 Bom 152.

³³ *Queen Empress v. Amba Prasad* ILR (1898) 20 All 55.

violence³⁴, whereas according to the decision of Privy Council 'seditious expression' ipso facto constitutes an offence even in the absence of 'incitement to violence'.³⁵

The confusion was finally cleared by the Supreme Court along with settling at rest the ongoing debate of constitutionality of sedition in respect of freedom of speech and expression. In *KedarNath Singh v. State of Bihar*³⁶, the court upheld the constitutional validity of offence of sedition and observed that the law laid down by the Federal Court reflects correct stand, that is 'intention' and 'incitement to violence' are essential ingredients of offence of sedition and must be read into the section 124A of IPC.³⁷

The right to Freedom of Speech and Expression is considered to be indispensable for the preservation of a democratic society wherein the citizens are active participants in the political affairs.³⁸ It implies a free exchange of ideas, dissemination of information and knowledge and freedom of expression of opinion.³⁹ The freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution which should be guarded by the court and also be recognized that free political discussion is essential for the proper functioning of a democratic government.⁴⁰ Freedom of speech and expression implies that different views are allowed to be expressed by proponents and opponents not because they are correct or valid but because there is freedom in this country for expressing even different views on any issue.⁴¹ Freedom of speech and expression is not merely a reflection of important interests of the community, but also a moral right as in if a man is burdened with an idea, he not only desires to express it, he ought to express it.⁴²

³⁴ *Niharendu Dutt Majumdar v. The King Emperor*, AIR 1942 FC 22.

³⁵ *Emperor v. Sadashiv Narayan Bhalerao*, AIR 1947 PC 82.

³⁶ AIR 1962 SC 955.

³⁷ Ibid.

³⁸ Supra note 3

³⁹ Trimbak Krishna Tope, *The Constitution of India* 65-66 (Bombay Popular Parkashan, 1971).

⁴⁰ *Brij Bushan v. State of Delhi*, AIR 1950 SC 129.

⁴¹ Durga Das Basu, *Commentary on the Constitution of India* 2390 (Wadhwa and Company Law Publishers, Nagpur, 8th edn., 2007).

⁴² Om Parkash Aggarwala, *Fundamental Rights and Constitutional Remedies* 260 (Metropolitan Book Co. Ltd., New Delhi, 1953).

5.0 SEDITION IN RESPECT OF FREEDOM OF SPEECH AND EXPRESSION: UK & USA PERSPECTIVE

United States of America provides for offence of sedition under 18 U.S.C Section 2384 (2000)⁴³, a Federal statute that punishes seditious conspiracy, and 18 U.S.C. Section 2385⁴⁴ which outlaws advocating the overthrow of the Federal Government by force.⁴⁵

*Schenck v. United States*⁴⁶, was the first significant case in which the Supreme Court of United States determined the scope of offence of sedition in the context of free speech. Justice Holmes laid down the 'clear and present danger' test for evaluating restrictions on expression that is if a speech is linked closely enough to illegal action, then it can be restricted.⁴⁷ But in *Gitlow v. New York*⁴⁸, the Supreme Court of United States abandoned the 'clear and present danger' test and applied a 'bad tendency analysis' which implied that acts involving danger of substantive evil must be punished.⁴⁹ The Supreme Court in *Dennis v. U.S.*⁵⁰, while upholding convictions under the Smith Act of 1940, of eleven leaders of the communist party for conspiring to advocate the overthrow of government of United States by force and violence.⁵¹ This case marked the beginning of the end of the 'clear and present danger' test and gave way to a 'balancing test' as put forward by Justice Frankfurter who observed that the object of First Amendment to the Constitution of United States was not to grant unqualified immunity to every expression concerning matters of political interest. Therefore, the individual right of free speech must be balanced in view of security of the nation.⁵²

⁴³ Title 18 U.S.C Section 2384 : If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

⁴⁴ Title 18 U.S.C. Section 2385 : Whoever knowingly or wilfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence or Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter, shall be fined under this title or imprisoned not more than twenty years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

⁴⁵ Section 2384 and section 2385, available at: <https://www.law.cornell.edu/uscode/text/18/2384/2385> (last viewed on April 15, 2022).

⁴⁶ 249 U.S. 47 (1919).

⁴⁷ Ibid.

⁴⁸ 268 U.S. 652 (1925).

⁴⁹ Ibid.

⁵⁰ 341 U.S. 494 (1951).

⁵¹ Ibid.

⁵² Michael Head, *Crimes Against the State: From Treason to Terrorism* (Ashgate Publishing Company, 2011).

Finally, in *Brandenburg v. Ohio*⁵³, which is the latest authority on the scope of offence of sedition in respect to freedom of speech and expression, the Supreme Court held that restriction on free speech can only be placed if there is danger of 'imminent lawless action'. The court held that "the constitutional guarantees of free speech and free press do not permit a state to forbid or prescribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

In United Kingdom sedition was a common law offence. As a distinct offence, sedition emerged from the earliest days of the emerging capitalist class in Britain, during the seventeenth century, first in its struggles against the absolutist monarchy and then in its strivings to consolidate its ascendancy, particularly against the emerging industrial class.⁵⁴

English law has traditionally taken little or no notice of freedom of speech. There has been no equivalent in England to the First Amendment to the United States. Constitution which prohibits any law that abridges freedom of speech.⁵⁵ Now, as a result of the Human Rights Act of 1998 (hereinafter referred to as HRA) the treatment of freedom of expression (and other fundamental rights) in the United Kingdom has changed radically. Rights, which used to be of only uncertain common law status, are explicitly recognized by the HRA.⁵⁶ Under this legislation, the right to freedom of expression guaranteed by Article 10 of the European Convention on Human Rights (hereinafter referred to as ECHR)⁵⁷ is protected by law in the United Kingdom. Courts are under an obligation to interpret legislation compatible with the right if possible.⁵⁸ As recommended by the Law Commission, sedition in England was abolished through the Coroners and Justice Act, 2009, under Gordon Brown's Labor Government.

⁵³ 395 US 444 (1969).

⁵⁴ Supra note 50

⁵⁵ Centre for the Study of Social Exclusion and Inclusive Policy, "Sedition Laws and Death of Free Speech in India" (National Law School of India University, Bangalore and Alternative Law Forum, Bangalore, February 2011) available at: http://www.nls.ac.in/resources/csseip/files/Seditionlaws_cover_final.pdf (last viewed on April 10,2022).

⁵⁶ Ibid.

⁵⁷ Article 10, European Convention on Human Rights:

1. everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

⁵⁸ Ibid.

6.0 SEDITION AND FREEDOM OF SPEECH AND EXPRESSION: A CONCEPTUAL DELIBERATION

One of the significant laws prevailing in any state, are the laws relating to self-preservation or the ones which secure the stability in a state. In almost every liberal democracy, in addition to the liberties guaranteed by the state, there are restrictions imposed by the state on the liberties in case, security of the state is threatened. From its inception, sedition has been regarded as an offence against the state and is placed under the category of political crimes. Sedition is also considered as a type of hate speech directed at the state or sovereign⁵⁹. Time and again the retention of sedition in the statute books has been justified on the ground that the law of sedition acts as a weapon in the hands of authorities to resist rebellion and to maintain public order. The interpretation of offence of sedition has also been a matter of controversy throughout history. For understanding the scope and ingredients of the offence of sedition, it is necessary to discuss its conceptual dimensions and historical background which is being discussed in this chapter.

During the colonial era, the British tried to suppress the voices of Indians through various measures such as drafting of provisions relating to sedition under IPC, Vernacular Press Act 1870, Seditious Meetings Act, 1907. These restrictions became the driving force for inclusion of freedom of speech and expression as a fundamental right.⁶⁰ The Constituent Assembly of India debated this right on December 1, 1948, December 2, 1948 and October 17, 1949. Article 13 (1) of the Draft Constitution ran as:

Subject to the other provisions of this Article, all citizens shall have the right –

(a) To freedom of speech and expression

Proviso: Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the state from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the security of, or tends to overthrow the state.

Almost every member of the Constituent Assembly welcomed the inclusion of the right, but few members were against the proviso appended to the right. They argued that the citizens would be able to express

⁵⁹ Sarah Sorial, *Sedition and the Advocacy of Violence: Free Speech and Counter-Terrorism 3* (Routledge Taylor and Francis Group, 2012). available at: <https://researchers.mq.edu.au/en/publications/sedition-and-the-advocacy-of-violence-free-speech-and-counter-ter> (last viewed on May 1, 2022).

⁶⁰ Rai Bahadur G.K. Roy, *Press and Sedition* 133 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2nd edn., 2013).

freely, only in the absence of restrictions and putting restrictions of free speech was a British practice which should not be followed by free India.⁶¹

The concept of free speech date backs to ancient Greece. The term 'free speech' first appeared around the end of fifth century BC. The Term has been derived from Greek word 'Parrhesia' which means free speech or to speak candidly.⁶² In the European history, King James I issued a speech restraint, but it led to a Declaration of Freedoms by Parliament in 1621. By the end of seventeenth century, the freedom of speech came to be known as a natural right. In the 1789 Declaration of the Rights of Human (after the French Revolution), the freedom of speech was regarded as a valuable right.⁶³

Few events down the line, recognizing the importance of free speech:⁶⁴

- In 1215, Magna Carta was signed, which later was regarded as the touchstone of liberty in England.
- In 1516, Desiderius Erasmus stated in his book, 'The Education of a Christian Prince', that "in a free state, tongues too should be free".
- In 1776, Section 12 of the Virginia Bill of Rights provided for the liberty of the press as an indispensable right.⁶⁵
- In 1789, Declaration of the Rights of Man provided for freedom of speech.
- In 1791, The First Amendment of the United States Bill of Rights guaranteed freedom of speech, prohibiting congress from enacting any law restricting free speech except by due process of law.

The significance of freedom of speech and expression has also been recognized by various International and Regional Instruments:

Article 19 of Universal Declaration of Human Rights provides for freedom of opinion and expression. It states that everyone shall have the right to hold opinions without interference and shall have access or disseminate the information by way of any medium.⁶⁶

⁶¹ Aqa Raza, "Freedom of Speech and Expression as a Fundamental Right in India and the test of Constitutional Regulations: The Constitutional Perspective", available at: https://www.researchgate.net/publication/306899769_Freedom_of_Speech_and_Expression_as_a_Fundamental_Right_in_India_and_the_Test_of_Constitutional_Regulations_The_Constitutional_Perspective (last viewed on May 1, 2022).

⁶² Origin of Free Speech, available at: <https://www.history.com/topics/united-states-constitution/freedom-of-speech> (last viewed on May 1, 2022).

⁶³ The Freedom of Speech, available at: <http://law.jrank.org/pages/22450/Freedom-Speech-Origins-Free-Speech-Concerns.html> (last viewed on May 1, 2022).

⁶⁴ The Origin of Free Speech, available at: <https://www.theguardian.com/media/2006/feb/05/religion.news> (last viewed on May 1, 2022).

⁶⁵ A.V. Dicey, Introduction to the Study of Law of the Constitution 238ff (Macmillan, New York, 10th edn., 1959), available at: https://files.libertyfund.org/files/1714/0125_Bk.pdf (last viewed on May 14, 2022).

Article 10 of the European Convention on Human Rights provides for freedom of expression and freedom to freely impart information without any restriction by public authority. However, the article does not prohibit the requirement of license for broadcasting, television or cinema enterprises. The freedom under this article is not absolute and is subject to the restrictions imposed in the interest of national security, territorial integrity, public safety, health, morality or defamation or for keeping the judiciary impartial.⁶⁷

Article 19 of International Covenant on civil and political rights, provides for expression of opinion without interference. It states that everyone is entitled to information and further to circulate it. However, this freedom is not absolute and is subject to laws restricting free speech in the interest of maintenance of public order, health or morality and defamation.⁶⁸

Article 13 of the American Convention on Human Rights provides for freedom of thought and expression. This right includes seeking, receiving or imparting information and to share ideas or opinions of any sort by way of writing, speech or through any other medium. This right is not subject to pre-censorship but is not exempted from the liability which can be imposed if it is inconsistent with the maintenance of public order, national security, reputation of others, public health or morality. However, the government cannot impose any indirect methods of restricting free speech, but, television programs or radio broadcast might be subject to scrutiny for protection of childhood. Further, advocacy of any ideas promoting racial unrest

⁶⁶ Article 19 of Universal Declaration of Human Rights: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers, available at: <https://www.humanrights.com/course/lesson/articles-19-25/read-article-19.html> (last viewed on May 1, 2022).

⁶⁷ Article 10 of European Convention on Human Rights: (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms since it carries with it duties and responsibilities may be subject to such formalities, conditions restrictions or penalties as are prescribed by law as are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary; available at: https://www.echr.coe.int/Documents/Convention_ENG.pdf (last viewed on May 1, 2022).

⁶⁸ Article 19 of International Convention on Civil and Political Rights: (1) Everyone shall have the right to hold opinion without interference

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall as be provided by law and are necessary.

(a) For respect of the rights or reputations of others.

(b) For the protection of national security or of public order (order public) or of public health or morals; available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last viewed on May 1, 2022).

or disturbs harmony among people of different class has been considered as criminal offence and restrictions can be imposed on free speech on these grounds.⁶⁹

6.1 CONCEPT OF FREEDOM OF SPEECH AND EXPRESSION

The freedom of speech and expression is considered as one of the most valuable assets in a democracy. This right ensures the citizens to actively participate in the political affairs of a nation. In the words of Sir Ivor Jennings, “without free elections, the people cannot make choice of policies without freedom of speech the appeal to reason which is the basis of democracy cannot be made without freedom of association electors and elected representatives cannot be bound themselves into parties for the formulation of common ends”.⁷⁰

When citizens of a nation express their views about various policies or actions of a state, this enables the state to improve upon the defects highlighted by its citizens.⁷¹

Freedom of speech and expression implies free exchange of thoughts, opinions and hassle-free dissemination of information and knowledge. This freedom includes right to share one's ideas and also of others, which can be done in any manner that is by publication, circulation and distribution of material containing ideas and opinions.⁷² Freedom of speech and expression is an umbrella right from which others rights such as right to be silent, right to be informed, the freedom of discussion, freedom to carry out demonstration, the right to criticize the government emerge.⁷³ It has been observed that freedom of speech and expression is not an individual's right but this right is for the betterment of the community to be heard

⁶⁹ Article 13 of American Convention on Human Rights: (i) Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. (ii) The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.

(iii) The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. (iv) Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

(v) Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law; available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=25&IID=1> (last viewed on May 1, 2022).

⁷⁰ Om Parkash Aggarwala, *Fundamental Rights and Constitutional Remedies* 260 (Metropolitan Book Co. Ltd., New Delhi, 1953). available at: <https://www.worldcat.org/title/fundamental-rights-and-constitutional-remedies/oclc/4175998> (last viewed on May 2, 2022).

⁷¹ Ibid.

⁷² Shivani Lohiya, *Law of Sedition* 38 (Universal Law Publishing, New Delhi, 2014).

⁷³ Ibid.

and be informed.⁷⁴ The basis of freedom of speech and expression is 'Liberty of Thought' and this right is significant not only for the life of an individual but also for life of the community.

The scope of freedom of speech and expression is very wide and presupposes the presence of second person to whom the opinion or thoughts are expressed, that is it implies a communication of ideas, views to others which can be made by publication or circulation. The freedom of speech and expression under article 19 (1) (a) of the Constitution of India is available to the citizens only and not to the foreign nationals.⁷⁵ Though article 19(1)(a) of the Constitution of India does not expressly provide for freedom of press but it is read as implied as one of the important facet of freedom of speech and expression.⁷⁶

In order to understand the importance of freedom of speech and expression in a democracy, it is necessary to take recourse to theory of free speech and how it has manifested itself in not only in the Constitution, but it has also been, time and again, reflected in judicial decisions.

In one of the earlier judgements, Chief Justice Patanjali Shastri observed that "freedom of speech and expression lay at the foundation of all democratic organizations, for without free political discussion, no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected with Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, that it is better to leave a few of its noxious branches to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits."⁷⁷

6.2 A DELIBERATION ON SEDITION:

In order to understand a crime in a very real sense, one should attempt to find its origin and then to study the political thinking underlying its inception into the body of criminal law. Historically, the provisions of the law of sedition have been misused by the government under the garb of performing its state functions. Governments have used all kinds of measures to suppress dissent, intimidate political opponents, poison public opinion, preventing embarrassment from its failures by diverting attention of the public and shredding basic fundamental right such as freedom of speech and expression.⁷⁸

⁷⁴ T.K. Tope, Constitutional Law of India 143 (Eastern Book Company, Lucknow, 2010).

⁷⁵ Hans Muller of Nuremburg v. Supdt., Presidency Jail, Calcutta, AIR 1955 SC 367.

⁷⁶ Narinder Kumar, Constitutional Law of India 188 (Allahabad Law Agency, Faridabad, 2005).

⁷⁷ Ramesh Thappar v. State of Madras, AIR 1950 SC 124.

⁷⁸ Michael Head, Crimes Against the State: From Treason to Terrorism 1 (Ashgate Publishing Company, 2011).

If the penal laws of various countries are reviewed, the offence of sedition falls under the category of crimes against the state. History has witnessed that not only totalitarian governments but also the democratic governments have made use of such stringent provisions against their citizens, especially during the time of political and economic tensions. In developed countries, there are rare instances of prosecutions under the law of sedition since World War II and the Cold War. On the other hand, in developing countries, there is a rise in number of prosecutions under the law of sedition because of the growing popular discontent and under unstable economic conditions.⁷⁹

Although the history of crime against the state can be traced back to Germanic law of Treason but the modern law can be found in the forms imposed by Rome over vanquished Germanic people. During the Roman Empire, both the 'person' and 'authority' of the emperor was protected. At that time the terms 'Treason' and 'Sedition' were used interchangeably.⁸⁰ After the fall of Roman Empire, the Roman legal doctrines were re-incarcerated by the Western Europe at the end of 11th Century. Absolute power came in the hands of monarchs; who adopted the roman concept of Crimen Laesae Majestatis for their offences against the State.⁸¹ Sedition as an offence was not known under common law until the fifteenth century. It was during the reign of Tudor, in sixteenth century, that this offence came to be known as political crime. Much of its development took place, not by legislative interference but by the change in public sentiment over a period of time.⁸²

6.3 ENGLISH LAW

In Statute of Westminster the First, reference can be found of an offence, being quasi-seditious in nature, cautioning that in order to avoid 'public discord' with the king or 'great men of the realm', none shall utter or publish 'false news or tales', out of which discord or 'occasion of discord' may arise and such propagator must be brought to court.⁸³ In the sixteenth century, the offence of sedition was placed close to treason, if it referred to Monarch or Crown. If not under that category, then it was covered under

⁷⁹ Ibid.

⁸⁰ Supra note 17

⁸¹ R. Wacks, Understanding Jurisprudence 19 (Oxford University Press, London, 2009).

⁸² James Stephen, History of Criminal Law of England 300 (Macmillan, London, 1883). available at: <https://www.law.utoronto.ca/sites/default/files/users/mdubber/Stephen%2C%20A%20History%20excerpt.pdf> (last viewed on May 12, 2022).

⁸³ (1275) 3 Edw. I, C. 34, available at: <http://www.legislation.gov.uk/aep/Edw1/3/5> (last viewed on May 11, 2022).

'Scandalum Magnatum' which referred to "defamatory speech or writing published to the injury of a peer, or the other great officer of England".⁸⁴

Initially, seditious speech was punished under Treason Act of 1534.⁸⁵ The reformation movement during 1530 and 1550 in England resulted in riots and rebellions. Therefore, the need was felt to punish seditious speech, and a provision for more harsher punishment, in order to suppress any kind of resistance to the authority of the government.⁸⁶ There is a need to analyze few historical events, to observe how this meaning of sedition evolved.

England became free from medieval notion that it is the church that controls everything and attained sovereignty in 1600. The result was, that the King became the paramount authority with wide powers. There was constitution of Court of Star Chambers by Henry III in 1487. This court exercised judicial functions aimed at maintaining king's peace. During this time, the king was regarded as supreme.

The first English codification came up in 1351 as Statute of Treason. It contained three main offences which were (1) Compassing the death of the monarch (2) levying war against the king in his realm and (3) adhering to king's enemies in his realm or elsewhere.⁸⁷ As the struggle between English capitalist class and monarchy arises, sedition arose as a crime distinct from Treason. Further, with the invention of printing press; monarchy was more concerned about suppressing the expression. Therefore, the Star Chamber used the offence of seditious libel as a weapon to suppress expression with punishments like pillory and loss of ears.⁸⁸

In 1606, an overbroad definition of sedition was given by the Star Chamber in the *De Libellis Famosis* decision, in which the Chamber defined sedition as speaking of inflammatory words, publishing certain libels, and conspiring with others to incite hatred or contempt for persons in authority in which the truth and falsity of libel was immaterial.

⁸⁴ Scandalum Magnatum, available at: <https://www.merriam-webster.com/dictionary/scandalum%20magnatum> (last viewed on May 11, 2022).

⁸⁵ The Act penalized every malicious will, wish or desire by words or writing, imagining, inventing, practicing or attempting any bodily harm to the King's most royal person, the Queen's or heirs apparent or to deprive them of any of their royal estates, or slanderously and maliciously publish and pronounce, by express writing or words, that the King should be heretic, schismatic, tyrant, infidel or usurper of the crown. The Act was repealed by Treason Act, 1547, available at: https://en.wikipedia.org/wiki/Treasons_Act_1534 (last viewed on May 11, 2022).

⁸⁶ Roger B. Manning, "The Origins of Doctrine of Sedition" 12 *Albion* 99-121 (1980). available at: <https://www.cambridge.org/core/journals/albion/article/abs/origins-of-the-doctrine-of-sedition/02D002BDB6AAB4E09DB37EB0D5F11E68> (last viewed on May 11, 2022).

⁸⁷ William E. Conklin, "The Origins of Sedition Law" 289 *Crim L.Q.* 277 (1972-1973). available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/clwqrtly15&div=33&id=&page=> (last viewed on May 13, 2022).

⁸⁸ *Ibid.*

After the abolition of Star Chamber by Long Parliament in 1641, the offence of sedition was further developed under the new regime of William III and Mary. Under the new regime defaming government or any individual associated with the government was held to be a crime.

Sir Edward Coke, as Attorney General under Queen Elizabeth, laid down certain principles constituting the offence of seditious libel. First principle was that even if the person, to whom the libel is imputed, is dead, such libel would still be punishable. Secondly, the libel against a public person must be considered more secure because it has a tendency to disturb public peace. Lastly, the important ingredient to constitute the offence of seditious libel is mens rea, even though it does not result into violence.⁸⁹ Sir Coke further elaborated these principles by observing that the liability of a publisher of a seditious libel would only arise, if he disseminates it among the public and threaten the authority of the state.

After the abolition of Star Chamber in 1641, efforts were made to make seditious libel punishable only where there was direct incitement to crime. The guilt of the accused was judged by the Jury on the basis of the actus reus of the accused and not upon the veracity of libel in question. Sedition was determined as a question of law by the Judge. But this was replaced by the passing of Libel Act, 1792.⁹⁰

With the Libel Act, 1792 in place, Jury got the authority to decide not only the fact of publication of seditious libel but also the guilt of the accused. There was also a change in the definition of offence of sedition. Earlier the basis of its application was to maintain King's peace, but after the Libel Act, 1792, it was applied where there was a tendency to lead to a public disturbance. Therefore, sedition came to be known as including all actions, words, written or uttered, which would disturb public peace, incite rebellion against the government or would bring contempt to the sovereign.⁹¹

⁸⁹ De Libellis Famosis, (1606) 77 Eng. Rep. 250. In this case the publisher of poems was prosecuted for seditious libel for poking fun at archbishop of Canterbury, available at: <http://law.jrank.org/pages/2020/Sedition-Domestic-Terrorism-early-English-experience.html> (last viewed on May 15, 2022).

⁹⁰ 1792/32 Geo. III C. 60, popularly known as the Fox's Libel Act after the influential role played in its enactment by member of British Parliament Charles James Fox. This legislation introduced by Whig leader in the House of Commons, Charles James Fox, was designed to reduce the power of the judiciary to determine whether an impugned publication was criminally libelous, and by the same token to increase the power of juries in criminal libel cases to reach that general conclusion. This Act now stands repealed in United Kingdom by the Coroners and Justice Act, 2009, Sched. 23 Part 2, with effect from January, 12 2010, available at: <https://web2.uvcs.uvic.ca/courses/lawdemo/DOCS/FOXEACTION.htm> (last viewed on May 15, 2022).

⁹¹ D. Gopalakrishna Sastri, The Law of Sedition in India 10 (India Law Institute, New Delhi, 1964). available at: <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/law-of-sedition-in-india-by-d-gopalakrishna-sastri-bombay-n-m-tripathi-private-ltd-for-the-indian-law-institute-new-delhi-1964-xii-and-92-pp-rs-850-or-17s-6d-stocked-and-distributed-in-the-uk-by-sweet-maxwell/7094AD3F5B4DE0651E60E4E730070833> (last viewed on May 15, 2022).

6.4 SEDITION IN COMMON LAW

The definition of the offence of sedition in Common Law can be stated as follows; “Sedition consists in acts, words, or writings, intended or calculated, under the circumstances of time, to disturb the tranquility of the state, by creating ill-will, discontent, disaffection, hatred or contempt, towards the King, or towards the Constitution or Parliament, or the government, or the established institutions of the country, or by exciting between different classes of the King’s subjects, or encouraging of them to endeavor to disobey, defy, or subvert the laws or resist their execution, or to create riots, or to do any act of violence or outrage or endangering the public peace.”⁹²

In order to understand the meaning of sedition at Common Law, two important cases of *Reg v. Sullivan*,⁹³ a trial for seditious libel and *Reg v. Burns*,⁹⁴ a trial for uttering seditious words, needs to be considered. In the previous case, defendants Sullivan and Pigott were prosecuted in 1868, for publishing articles, alleged to contain seditious libel of a very dangerous character, against Her Majesty’s government, in their newspapers- *The Weekly News* and *the Irishman*. Lord Fitzgerald, while addressing the Jury defined the term ‘sedition’.⁹⁵ He termed sedition as a crime against the society. According to Lord Fitzgerald, the term sedition is of a very wide connotation and encompasses all the acts, deeds or writings, with a tendency to induce the people to raise opposition against the government.⁹⁶ The object of sedition is to excite insurrection and rebellion. Sedition refers to the disloyalty in action and includes within its ambit all activities, with a tendency to create public disorder, or lead to a civil war, to bring hatred or contempt against the Sovereign or the government.

It was further observed by the Lordship that in order to determine the seditious intention, surrounding circumstances along with the state of the country and the public opinion prevalent at the time of the publication are to be considered in making out the offence. The only exception to this offence was to criticize the government only for the purpose of reformation of the measures taken by the government but then also, one should not use the language that would indicate contempt of the laws of the land.⁹⁷ When a public writer exceeds his limit and uses his privilege to create discontent and disaffection he becomes

⁹² J.W. Cecil Turner, *Russel on Crime* 216 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 12th edn., 2001)

⁹³ (1869)11 Cox C.C. 44, cited in *Ibid*.

⁹⁴ (1886) 16 Cox 355,

⁹⁵ W.R. Donogh, *A Treatise on the Law of Sedition and Cognate Offences in British India* 10 (Thakker, Spink and Co., Calcutta, 1911). available at <http://archive.org/stream/onlawofsedition00dono#page/n23/mode/2up> (Last visited on May 10, 2022).

⁹⁶ *Ibid*.

⁹⁷ *Ibid*.

guilty of sedition. During the trial of Pigott, learned Judge Baron Deasy, made few observations regarding restrictions on the freedom of press. According to learned Judge Baron Deasy, that no doubt press has the right to initiate discussion on any subject, but at the same time it has the duty to respect the existence of the form of government and not to overstep the limits of free discussion. The Jury found the defendant guilty of the charge of publishing seditious libel.⁹⁸

The second important trial at Common Law, on this subject was of *Reg v. Burns*,⁹⁹ In this case, John Burns, in 1886, was indicted along with three others, for maliciously uttering seditious words to cause ill will among Her Majesty's subjects, and for carrying out a seditious conspiracy to achieve this objective. The indictment was in relation to the speeches delivered, by four defendants, on two accounts, one at Trafalgar square and other at Hyde Park.¹⁰⁰ Both the events were followed by disturbances, which were alleged to have been the immediate consequences of uttering seditious words by the four defendants. It was in evidence that after the delivery of the speeches in Trafalgar Square, 3000 to 4000 persons, mostly unemployed workmen, marched towards the west end. On their way a demonstration took place in front of Carlton Club, where the mob indulged in stone-throwing and a number of windows were broken. Similar incidents were reported after the speeches in Hyde Park.¹⁰¹ The Crown suggested that though the defendants did not directly instigate the disorderly behavior by the mob, yet, the knowledge of the natural consequences of such language, used by them in their speeches, must be attributed to them. Justice Cave observed that in order to determine the seditious intention, surrounding circumstances must be considered, as what is seditious under certain circumstances, might not be so under other.¹⁰² Justice Cave also quoted few observations, relating to the general presumption that everyone is presumed to know the natural consequences of his acts, by Lord Tenterden in the case of *Haire v. Wilson*.¹⁰³

Justice Cave further stated that Seditious intention must be determined from the contents of the publication itself. If the contents of the paper were likely to excite sedition and disaffection, then seditious

⁹⁸ Ibid.

⁹⁹ Supra note 37

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ (1829) 9 B. & C., 643. In this case, the libel complained of was purported to be the report of a proceeding in the insolvency court and imputed to the insolvent's landlord (the plaintiff) that he has colluded with the insolvent in putting in a fictitious distress. It was observed that the law presumes the party to have intended to produce the injury which the libel was calculated to affect.

intention can be attributed to the defendant.¹⁰⁴ The learned Judge made additional observations by stating that, it was not necessary that there should be an actual disturbance of the public peace.¹⁰⁵ Therefore, intention is to be judged from the language used.

It is sedition if anyone speaks or publishes any defamatory statement against the individual members of the government or against the government collectively, with an intention to subvert the laws, to excite rebellion or insurrection. When government is targeted for corruption without there being any libel against any individual and any intention to excite a contempt of Her Majesty's government, then it is not sedition.¹⁰⁶

It is every man's right to discuss the measures of the King or the policies of the government. But it must also be taken into consideration that the criticism must not be to target the private character of the officer of the government as such tendencies may scandalize the government, endanger the public peace and may incline the people to faction and sedition.¹⁰⁷

Thomas Paine contended that popular political revolution was necessary when government no longer protects the rights and safeguard the interest of its people. Following the publications, the government issued a royal proclamation against seditious writings in 1792 which resulted in over 100 prosecutions for sedition in the 1790's which also included prosecution of J.S. Jordan, who was the publisher of 'Rights of Man'.¹⁰⁸

In order to suppress any kind of strike or suppress dissent against the government, the government used to enforce martial law. Winston Churchill was criticised for adopting such a measure but the law officers contended that such type of measures were necessary to maintain public order and moreover, soldiers were merely exercising their rights and duties as ordinary citizens.¹⁰⁹

¹⁰⁴ Reg v. Burdett, (1820)4 B & A., in this case, the defendant writes a libel in one county and publish it in another county, it was observed in this case that. then he may be indicted for misdemeanor in either county, available at: <http://www.uniset.ca/other/cs5/106ER873.html> (last viewed on April 19, 2018).

¹⁰⁵ Supra note 24

¹⁰⁶ R v. Collins 9 C & P., 456. In this case, a defendant was tried for publishing a letter purporting to be the resolutions of a body of persons calling themselves the general convention and which letter in one part of it stated that an outrage had been committed on the people of Birmingham by a force "acting under the authority of men who, when out of office sanctioned and took part in the meetings of the people".

¹⁰⁷ Supra note 36

¹⁰⁸ J. Barrel and J. Mee (eds.), Trials for Treason and Sedition 1792-1794 (Pickering and Chatto, London, 2006). available at: <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1754-0208.2008.00065.x> (last viewed on April, 19, 2018).

¹⁰⁹ A. Babington, Military Intervention in Britain: from the Gordon Riots to the Gibraltar Incident 142 (Routledge, London, 1990). available at: <https://www.taylorfrancis.com/books/mono/10.4324/9781315680613/military-intervention-britain-anthony-babington> (last viewed on April, 21, 2022).

At the end of World War I, the incitement to Mutiny Act, 1797, which was lying inoperative for more than 100 years, was brought to life to suppress the rise of socialist led militancy in the working class. The British Government made use of this law against the young Communist Party of Great Britain (hereinafter referred to as CPGB), which was founded as a result of Russian Revolution of October, 1917. The Police raided the national and London Headquarters of CPGB. Twelve of the CPGB's leaders were arrested and imprisoned under the charge of sedition for inciting others to mutiny under the Mutiny Act 1797.¹¹⁰ This Act was suppressed by incitement of Disaffection Act in 1934, which was enacted for prohibition and punishment for seducing any members in the armed forces to disobey their duties. Though substantially all the provisions were reproduced except one that Disaffection Act, 1934 also provided for summary prosecutions making prosecutions easier, both legally and politically.¹¹¹ Till 1972, there were hardly any prosecutions under the 1934 Act. In 1972, it came to be used against the groups who were influencing soldiers to desert and join Irish Republican Army. The British Government used the law to suppress political and industrial turbulence within the country.¹¹² Finally, the seditious libel was deleted by section 73 of the Coroners and Justice Act, 2009.¹¹³ One of the reasons given for abolishing seditious libel was: Having an unnecessary and overbroad common law offence of sedition, when the same matters are dealt with under other legislation, is not only confusing and unnecessary, it may have a chilling effect on freedom of speech and sends the wrong signal to other countries which maintain and actually use sedition offences as a means of limiting political debate.¹¹⁴

7.0 INDIA

In India, the history and the interpretation of law of sedition is looked at from two different perspectives, one being, judicial and the other is political.¹¹⁵ The Charter Act of 1833, established a legislative council to handle civil, defense and commercial interests of East India Company. Lord Thomas Bakington Macaulay along with other members of Law Commission took charge to draft the Criminal Penal Code for

¹¹⁰ Supra note 21

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Section 73: Abolition of common law libel offences etc The following offences under the common law of England and Wales and the common law of Northern Ireland are abolished— (a) the offences of sedition and seditious libel; (b) the offence of defamatory libel; (c) the offence of obscene libel.

¹¹⁴ Liberty's Report Stage Briefing and Amendments on the Coroners and Justice Bill in the House of Commons (March 2009) available at: <https://www.liberty-humanrights.org.uk/sites/default/files/liberty-s-coroners-and-justice-report-briefing-excluding-secretinguests-.pdf> (last viewed on May, 2, 2022).

¹¹⁵ Anushka Singh, Sedition in Liberal Democracies 137 (Oxford University Press, New Delhi, 2018). available at: <https://oxford.universitypressscholarship.com/view/10.1093/oso/9780199481699.001.0001/oso-9780199481699> (last viewed on May, 2, 2022).

India, in order to have a uniform system of justice applicable all across the Indian British Empire. The Law Commission appointed for the drafting of a penal code was doubtful of the competence of the Indian Legislature to enact a general law of sedition. Therefore, the Law Commission suggested that the Imperial Legislature should draft such law and be made applicable to the whole Empire.¹¹⁶ The Charter Act of 1833, contained a restriction on the legislature under section 43¹¹⁷

The Law Commission proposed section 113, punishing excitement of disaffection against the government established by law in the territories of East India Company.¹¹⁸

By the mid-nineteenth century the British managed to consolidate its position in India and had to face their challenge in the form of revolt of 1857.¹¹⁹ Behind this backdrop, The Indian Penal Code, 1860, (hereinafter referred as IPC) was enacted by the British to tackle the resentment posed by the press.¹²⁰

According to Rajiv Dhawan, Commissioner of International Commission of Jurists, "The Indian Penal Code, 1860, was a comprehensive code. Not all the provisions were directed against free speech but virtually all could be used against it."¹²¹

Provision on sedition did not make it to the final draft is considered as vague. It is opined that one of the reasons of its omission was that Governor General Lord Canning was against the inclusion of such a provision, as he viewed it as a restriction on freedom of speech.¹²² This was evident from his remarks on the Press Bill 1857. The transfer of power of Indian territories from East India Company to the Queen in 1858 is cited as another reason for the omission of a provision on sedition in 1860. The Law Commission was hesitant to enact such a provision as it held itself to be incompetent to do so in light of the changed

¹¹⁶ Supra note 35

¹¹⁷ "The Governor-General-in-Council shall not have the power of making any law or regulation which shall in any way affect the prerogative of the Crown, and the authority of the Parliament, and the Constitution or the rights of the said Company, or any part of the unwritten laws or Constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom, or the sovereignty or Dominion of the said Crown over any part of the said territories."

¹¹⁸ "Whoever, by words, either spoken or intended to be read, or by signs, or by visible representations, attempts to incite feelings of disaffection to the Government established by law in the territories of East India Company, among any class of people who live under that Government, shall be punished with banishment for life or for any term from the territories of the East India Company, to which fine may be added, or with simple imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation: Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government against unlawful attempts to subvert or resist is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation is not an offence within this clause."

¹¹⁹ Supra note 14

¹²⁰ Ibid.

¹²¹ S. Naved, 'On Sedition', 2010, available at: <https://kafila.online/2010/12/07/sedition-law-india-dissent-history-courts/> (last viewed on April 25, 2022).

¹²² Supra note 35

circumstances and thus making such law to be invalid.¹²³ The British were prompted by the increasing Wahabi activities between 1863-1870,¹²⁴ which aimed at establishing Muslim rule in India.¹²⁵ Wahabis were collecting money and gathering men from Bihar and Bengal through their agents appointed at various places. To book these agents, E.C. Barley, Secretary to Government of India, Home Department suggested the amendment to the Penal Code in order to counter problem of seditious proceedings, not amounting to waging, or attempting to or abetting to wage war against the Queen.¹²⁶ The situation got worsened with the murders of Viceroy Lord Mayo and Justice Norman of the Calcutta.

Mr. James Stephen thereafter set out to rectify this omission. Consequently, sedition was included as an offence under section 124A IPC through special Act XVII of 1870¹²⁷. This section was in line with the Treason Felony Act 1848¹²⁸ that penalised seditious expressions.

The Act XXVII of 1870 contained in section V of the Indian Penal Code defined sedition¹²⁹

This definition of the offence of sedition in India was based on three laws of England, The Treason Felony Act, 1848,¹³⁰ the Common Law with regard to seditious libel and the law as to seditious words.

¹²³ William E. Conklin, "The Origins of Sedition Law" *Crim.L.Q.* 277-289 (1972-1973). available at: https://heinonline.org/HOL/AuthorProfile?base=js&search_name=Conklin,%20Bill%20E.&I=1583357574 (last viewed on April 22, 2022).

¹²⁴ The Wahabi Movement was by the Muslims and aimed at establishment of Dar-ul-Islam in India. They were successful in creating anti-British sentiments among Indians which stimulated the revolt of 1857. Syed Ahmed from Rae Bareilly, was the leader of this movement in India, whose ideology was to condemn any change into the original practices of Islam. The Wahabi Movement in India, available at: <https://edgearticles.com/2014/03/26/wahabi-movement/> (last viewed on April 11, 2022).

¹²⁵ S. Narrain, "Disaffection and the Law: The Chilling Effects of Sedition Laws in India", *Econ. Political Wkly.* 41 (2011). available at: <https://www.epw.in/journal/2011/08/perspectives/disaffection-and-law-chilling-effect-sedition-laws-india.html> (last viewed on April 11, 2022).

¹²⁶ Shivani Lohiya, *Law of Sedition* 38 (Universal Law Publishing, New Delhi, 2014).

¹²⁷ Ganachari in his book opines that this section was included in the penal code to counter the Wahabi activities.

¹²⁸ Available at: <http://www.legislation.gov.uk/ukpga/Vict/11-12/12/section/3> (last Visited on Jan. 21, 2022).

¹²⁹ Whoever by words, either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Explanation- such a disapprobation of the measures of the government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disaffection, is not an offence within this clause.

¹³⁰ Section 3 of the Treason Felony Act, 1848: if any person whatsoever after the passing of this Act shall, within the United Kingdom, or without compass, imagine, invent, devise or intend to deprive or depose our most gracious lady the Queen, her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of Her Majesty's dominions and countries, or to levy war against her Majesty, her heirs or successors, within any part of the United Kingdom, in order by force or constraint to compel her or their measures or counsels, or in order to put any force or constraint upon or in order to intimidate or overawe both houses or either House of Parliament, or to move or stir or foreigner or stranger with force to invade the United Kingdom or any other Her Majesty's dominion or countries under obedience of Her Majesty, or heirs or successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter or declare, by publishing and printing or writing, or by open and advised speaking, or by any overt act or deed, every person so offending shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be transported beyond the seas for the term of his or her natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct.

The definition of the offence of sedition was ambiguous, yet it was more precise and less obscure than the definition of the offence under the English law.¹³¹ The inherent ambiguities in the definition of the offence of sedition, its scope was expanded further by employing wider meaning to the words used in the definition of the offence of sedition. The word 'disaffection' and 'disapprobation' were held to be different from one another and an attempt to incite ill-will feelings towards the government was held to be not same as disapprobation.¹³² The need for the amendment in the provision of the offence of sedition was soon felt after sedition charges were pressed against editors of nationalist newspapers, Surendranath Banerjee, editor of 'Bengalee' and Bal Gangadhar Tilak, editor of 'Kesari'.¹³³ It was observed in these trials that the problem with definition of sedition is the understanding of the word 'disaffection'.¹³⁴ In Tilak's case, Justice Strachey interpreted the word 'disaffection' as the absence of affection. He observed that 'hatred', 'enmity', 'dislike', 'contempt', 'disloyalty', and all feelings of ill-will against the government count as disaffection.¹³⁵ Justice Strachey's interpretation went beyond the law in the IPC, 1860. 'Disaffection' came to be known as something equivalent to 'disloyalty'. The two subsequent trials for sedition further widened the scope of the offence.¹³⁶ Despite broad interpretations to the offence the accused were found not guilty of the offence. It was realized that the 'explanation' to the offence was resulting in ambiguities about the nature of the law.

Following was the provision for sedition added in 1898 to IPC;

Section 124A of IPC– Sedition- 'whoever by words, either spoken or written or by signs or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine'.

Explanation 1- the expression "disaffection" includes disloyalty and all feelings of enmity

¹³¹ Centre for the Study of Social Exclusion and Inclusive Policy, "Sedition Laws and Death of Free Speech in India" (National Law School of India University, Bangalore and Alternative Law Forum, Bangalore, February 2011) available at: http://www.nls.ac.in/resources/csseip/files/Seditionlaws_cover_final.pdf (last viewed on April 14, 2022).

¹³² Queen Empress v. Jogendra Chandra Bose, ILR 19 Cal 35.

¹³³ Ujjwal Kumar Singh, Political Prisoners in India 24 (Oxford University Press, New Delhi, 1998)

¹³⁴ Ibid.

¹³⁵ A.G. Noorani, Indian Political Trials: 1775-1947 119-120 (New Delhi, 2009).

¹³⁶ Queen Empress v. Ramchandra Narayan and Others, ILR (1898) 22 Bom 152., Queen Empress v. Amba Prasad, ILR (1898) 20 All 55.

Explanation 2- comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3- comments expressing disapprobation of the administrative or other action of the government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.¹³⁷

The provision of the law of sedition is based on the principle that every state, whatever its form of government, has to be armed with the power to punish those who by their conduct jeopardized the safety and stability of the state, or disseminate such feelings of disloyalty as have the tendency to lead to the disruption in the state or to public disorder.¹³⁸ That is why 'Sedition' as an offence under Section 124A of IPC, 1860, has been placed under Chapter VI relating to offences against the state.

When the need was felt to amend the law of sedition, there was another debate surrounding the freedom of press was to repeal Vernacular Press Act, passed in 1878. The Act introduced in pre-censorship of newspapers by government.¹³⁹ In the debate to repeal this Act, it was also suggested that section 124A of IPC also needs to be amended to make it more effective to restrict libelous expression. The government decided to repeal the Vernacular Press Act, 1878 and make changes in the law of sedition under IPC. The government proposed that where there is no obvious intention to resist or subvert the government then such case should not be considered as a case for sedition.

This proposed amendment was prompted because sedition charges were imposed on number of newspapers, where the government failed to prove the charge at trial. Few examples of such publications were Banaras Akbar in North-Western Provinces (hereinafter referred to as NWP), Shivaji in Bombay, Poona Vaibhava in Bombay, Rahbar-i-Hind in Punjab, Akbar-i-an in Punjab and Mahratta in Bombay.¹⁴⁰ In some instances, there was no consensus among the authorities in the prosecution of the editors of the newspaper, for the offence of sedition. The government debated the prosecution of the editor of 'Amrita

¹³⁷ Section 124A of Indian Penal Code, 1860.

¹³⁸ K.D. Gaur, The Indian Penal Code 225 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4th edn., 2009).

¹³⁹ Anushka Singh, Sedition in Liberal Democracies 137 (Oxford University Press, New Delhi, 2018). <https://global.oup.com/academic/product/sedition-in-liberal-democracies-9780199481699?cc=id&lang=en&> (last viewed on May 14, 2022).

¹⁴⁰ Ibid.

Bazar Patrika', editors of 'Sudhakar' and 'Silchar'.¹⁴¹ The Editor of the 'Anand Bazar Patrika' published an article titled 'An appeal to the opponents of Congress' in which he highlighted that there is a limit for everything including patience and obedience and that oppression always leads to violence. On the advice of Solicitor General, the prosecution was dropped, as he opined that it might aggravate the prevalent situation in India. Again, the prosecution of the editor for an article published in 'Silchar' on August 25, 1890 was debated. The article contained the conversation between the master and a pupil. On a question raised by a pupil, about the relation between Englishman and people of India, the master compared the relationship between them to a tiger and a lamb. The former being a tiger and the latter a lamb. Following the meaning given by Sir James Stephen to the word 'disaffection', the Advocate General advised to not to hold the prosecution.¹⁴² But, still the government was successful in conducting trials for seditious libel in four cases, before the amendment to section 124A of IPC in 1898.

After the enactment of law of sedition in 1870, the first case reported was Queen Empress v. Jogendra Chunder Bose,¹⁴³ popularly known as the 'Bangobasi' case, that bring the name of the newspaper in which an article critical to the Age of Consent Bill¹⁴⁴ comparing the government with the Aurangzeb and Kalapahar was published. The articles published in the 'Bangobasi' was considered as seditious.

Sir C. Petheram, C.J., observed that the term 'disaffection' is opposite of affection whoever, by his words, written or spoken, arose a feeling in the others to resist the government, whenever occasion arises, or excite feelings of ill-will towards the government, is said to have committed an offence of sedition. It is not necessary, to constitute this offence, that actual disturbance has occurred as a result of use of seditious language. The Jury however failed to reach a consensus, therefore, accused were discharged. The case was sent for retrial, but the accused tendered an apology, so the proceedings were dropped.¹⁴⁵

By the Amendment Act IV of 1898,¹⁴⁶ 'hatred' and 'contempt' were added with the word disaffection which included both 'disloyalty' and 'feelings of enmity'. Further, section 153A was incorporated with

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ ILR (1892) Cal 35.

¹⁴⁴ Age of Consent Bill was a legislation enacted in British India on March 19, 1891. This legislation raised the age of consent for sexual intercourse for girls, married or unmarried, from 10 to 12 years. The legislation received criticism from the orthodox Hindu community, which termed it as an interference with their religious affairs. This legislation was passed in the wake of several deaths, among child wives aged from nine to 12. Some also got crippled, paralysed or were severely injured as the result of premature cohabitation, cited in V. Baxi, Towards a Sociology of Indian Law 40-44 (Satvahan Publications, New Delhi, 1986).

¹⁴⁵ Supra note 37

¹⁴⁶ The Indian Penal Code, 1860 (Act. No IV of 1898).

the code penalising promotion of feelings of hatred or ill-will between different classes of Indian people.¹⁴⁷

In a bid to strengthen the crime of sedition, the British also posted restrictions on public meetings to restrict political reformation, similar to that of French Revolution. In 1795, London Corresponding Society held a mass open-air meeting at Copenhagen house on October 26, to protest against raised prices of bread and to demand a parliamentary reform. George III, on his way to the Parliament was hooted and the mob also pelted stones on his coach. Sensing the mood of the general public, Prime Minister William Pitt's government enacted the Seditious Meetings Act, to restrict the size of public meetings to 50 members.¹⁴⁸ The Seditious Meetings Act stated that no place shall be used for holding discussions, questioning the functioning of the government and policy of the kingdom, otherwise that place shall be declared as house of public disorder. The Seditious Meetings Act, 1795 was the second of the well-known "Two Acts" (also known as the "Gigging Acts" or the "Grenville and the Pitts Bills"), the other one was the Treason Act, 1795. The British further strengthened this Act by replacing it with Seditious Meetings Act, 1817, which was passed by Lord Liverpool's government. The reason for the passing of the above said act, was the rise in radical activities by groups such as Hampden Clubs¹⁴⁹ The incidents like Spa Fields Riot of December 1816,¹⁵⁰ an attack on the Prince Regent in January 1817¹⁵¹ and the March of Blanketeers,¹⁵² raised concerns of the parliamentarians, who responded by enacting the Seditious Meetings Act, 1817. Because of the Sunset Clause,¹⁵³ certain provisions like sedition meetings in general and licensing requirements for public debates at public places terminated on July 24, 1818, but this was revived again in a modified form in the Seditious Meetings Act, 1819. The Seditious Meetings Act, 1819 was a part of six acts passed by the British in the wake of the Peterloo Massacre of August 16, 1819, to suppress any meetings for the purpose of avoiding a radical reform. Further section 23 of the Seditious

¹⁴⁷ Supra note 57

¹⁴⁸ The Seditious Meetings Act, 1795, available at: <https://www.revolvy.com/page/Seditious-Meetings-Act-1795> (last viewed on April 17, 2022).

¹⁴⁹ Ibid.

¹⁵⁰ On December 2, 1816, Spenceans called a meeting at Spa Fields. The 80 police officers were trying to disperse the gathering, that one person named Joseph Rhodes was stabbed, causing riots, available at: <https://spartacus-educational.com/LONspa.htm> (last viewed on April 23, 2022).

¹⁵¹ Prince Regent's chariot was attacked by radicals, when he going to Westminster to open first session of Parliament, who demanded parliamentary reforms, available at: <http://www.historyhome.co.uk/c-eight/constitu/regent.htm> (last viewed on April 23, 2022).

¹⁵² This was the March by Manchester Radicals, known as 'Blanketeers', to London, against the Prince Regent over desperate state of textile industry in Lancashire and the suspension of Habeas Corpus in 1817, available at: <https://www.thehistorypress.co.uk/articles/the-march-of-the-blanketeers-1817/> (last viewed on April 23, 2022).

¹⁵³ Sunset Clause: A provision of law that will be automatically be terminated after a fixed period unless it is extended by law, available at: <https://www.collinsdictionary.com/dictionary/english/sunset-clause> (last viewed on April 23, 2022).

Meetings Act, 1817 which banned public meetings within a mile of the gates of Westminster Hall, was suspended by the Act of 1819. The Seditious Meetings Act, 1819 was repealed in 1824, thereby, reinstating section 23 of the Seditious Meetings Act, 1817. Finally, this provision was repealed by Public Order Act, 1986.¹⁵⁴

Similar law was passed in British India in 1907. The Imperial Legislative Council of the British, passed the Prevention of Seditious Meetings Act, 1907, to prevent public meetings constituting more than 20 members, to promote sedition or to cause a public disturbance. The Prevention of Seditious Meetings Act, 1907 act was replaced by the Seditious Meetings Act, 1911. Further, Seditious Meetings Act, 1911 has been repealed recently by Repealing and Amending (Second) Act (Act No. IV of 2018).

8.0 THE UNITED STATES

as an erstwhile British Colony, has a history of following common law practices but, with 1812 Federal Court verdict every Common law practice was declared invalid and imperative. Therefore, more or less in the United States, there has always been a codified legal system.¹⁵⁵

In spite of the fact that the First Amendment to the United States Constitution provided wide protection to the right of freedom of speech, the government of the United States did suppress political opponents of government during six war: the conflict with France, Civil War, World War I and II, the Cold War and the Vietnam War.¹⁵⁶ At the end of eighteenth century, during its conflict with France, the United States introduced the Alien and Sedition Act 1798. This Act made it an offence to make any false, scandalous and malicious writings against the government either house of congress or the President, with intent to defame or to bring them into contempt or disrepute; or to excite against them hatred of the good people of the United States, or to stir up sedition.¹⁵⁷ This Act was repealed by President Jefferson but it was resurrected again during Civil War. President Abraham Lincoln passed an order suspending the writ of

¹⁵⁴ Section 9 (c) of Public Order Act, 1986: Section 23 of the Seditious Meetings Act, 1817 (prohibition of certain meetings within one mile of Westminster Hall when parliament) is abolished, available at: <https://www.legislation.gov.uk/ukpga/1986/64/section/9> (last viewed on April 23, 2022).

¹⁵⁵ Supra note 81

¹⁵⁶ G. Stone, *Perilous times: Free Speech in Wartime* 12-13 (Norton, New York, 2004).

¹⁵⁷ Alien Act (Ch-58) 1 stat 570 (1798).

Habeas Corpus which led to the detention of several political opponents who opposed the policies of government through their speech and writings.¹⁵⁸

In 1917, the government of United States enacted The Espionage Act which made it an offence to make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies.¹⁵⁹

History has shown that during the times of political disturbances, the governments have tried to suppress it by criminal prosecutions. In 1776, the Declaration of Independence was passed which provided for the basic rights such as right to revolt, right to life, liberty and pursuit of happiness. Two decades later, the United States Government passed the Sedition Act of 1798 in result of war with France. The Act prohibited on uttering, writing or publishing any material which has the tendency of defaming the government, the Congress or the President. David Brown was fined \$450 and was sentenced to 18 months' imprisonment for protesting against this Act in the name of liberty.¹⁶⁰

The United States conceptualized the offence of sedition by passed the Sedition Act, 1918. It was an offence under Sedition Act, 1918 to utter, print, write, or publish any disloyal, profane, scurrilous or abusive language about the form of Government of the United States, or the Constitution of the United States, or the military of the United States, or the Flag or the uniform of the Army or Navy of the United States, or any language intended to bring the form of Government or the Constitution or the military or naval forces or the Flag of the United States into contempt, scorn, contumely, or disrepute.¹⁶¹

Sedition Act, 1918 was repealed in 1921. Sedition as an offence was redefined in the Alien Registration Act, popularly known as the Smith Act, 1921. Under this act, it was an offence to advocate, abet, advise or teach the duty, necessity, desirability, or propriety of overthrowing or destroying the Government of the United States or the Government of any State, by force or by violence.¹⁶²

The United States Supreme Court has never overturned the sedition as an offence under the Smith Act but has imposed tougher standards to justify restrictions.¹⁶³ The Last conviction under this Act was of

¹⁵⁸ Sarah Sorial, *Sedition and the Advocacy of Violence: Free Speech and Counter-Terrorism* 3 (Routledge Taylor and Francis Group, 2012).

¹⁵⁹ L.K. Donohue, "Terrorist Speech and the future of Free Expression", 27 CLR 233-341 (2005-06).

¹⁶⁰ G. Stone, *Perilous times: Free Speech in Wartime* 12-13 (Norton, New York, 2004).

¹⁶¹ Sedition Act (Ch 75) 53, 40 stat 553 (1918).

¹⁶² Supra note 57

¹⁶³ Supra note 1

Rahman, a cleric, who was prosecuted and convicted for a seditious conspiracy. This conviction was solely on the basis of a speech delivered by him without any overt act being done by him. This case arose a peculiar debate on religious freedom as a direct link was established between his speech and the acts carried on by his followers.¹⁶⁴

Sedition is an offence also found place in the United States Code which was passed by the American Congress in 1926. The United States Code is divided into 54 Titles while it is difficult in England to find such kind of categorization of offences because of its uncodified nature, but in India, the United States, there exists such categorization. Political offences appear in Chapter 115 Part I, Title 18 of the United States Code.¹⁶⁵ Title 18 reads as 'Treason, sedition and subversive activities. This heading includes the offences such as Treason, misprision of treason, seditious conspiracy, rebellion or insurrection, advocating overthrow of government, registration of certain organizations which aim to overthrow the government, affecting armed forces generally or during war.¹⁶⁶ In United States the offence of sedition continues to be in existence as the judiciary has been successful in striking a balance between the free speech guaranteed under the First Amendment of United States Constitution

English Law of Sedition ropes in all practices by word, deed or writing which urges people to rebel against the sovereign. Unlike India, class hatred is also considered as a facet of sedition under English Law. Indian law of sedition is based on same lines as that in England, but its scope is narrower in India. In India, class hatred and insult to religious sentiments are provided under the category of offences against the public tranquility while sedition is placed under chapter dealing with offences against the state.

In India, causing disaffection, hatred or contempt against the government established by law is constitutes an offence of sedition. Promotion of feelings of ill will among different classes has been kept outside the purview of sedition. Promotion of class hatred has been dealt as a separate offence under IPC. Criticism of the government measures, in good faith, to secure the alterations of the measures of the government by peaceful means does not amount to sedition. It can be concluded from the above discussion that sedition as an offence is understood in the sense of causing disaffection against the established authority. The guilt of the person charged under sedition law is determined on the basis of 'Intention'. In countries where law is still in existence, the element of 'intention' is read into the definition of sedition, if not expressly

¹⁶⁴ Ibid.

¹⁶⁵ Supra note 1

¹⁶⁶ Ibid.

provided, to check its abuse. The rationale or the justification for such a provision, that sometimes stands in conflict with freedom of speech and expression, in the different legal codes is the maintenance of public order.

9.0 FINDINGS

9.1 COLONIAL LAW

The concept of sedition is not recent origin, it was a common law offence. Sedition clause is an impression of British colonial rule, originally introduced to suppress critical voices emanating from the Indian freedom movement. Section 124A of the IPC, 1860, as we have today, was absent from the original draft of Macaulay's IPC in 1860, and was only introduced in the year 1870, by James Stephen. But this colonial law is still being used in independent India, despite having specialised laws to deal with the external and internal threats to sabotage the nation. In a democratic republic where the sovereignty rests with the citizens such law has no significance

9.2 SEDITION NOT A PART OF 19(2)

Under the constitution of India, the fundamental right to free expression can only be subjected to 'reasonable restrictions' specified under article 19(2) in which sedition is not included. The Constituent Assembly itself unanimously resolved not to include sedition as a ground to restrict free speech. Sedition was initially incorporated under Article 13 of the draft Constitution, which is the equivalent of the present Article 19. At the instance of KM Munshi, TT Krishnamachari and Seth Govind Das, the Constituent Assembly resolved not to include sedition as an exception to the right to free speech.

9.3 VAGUE DEFINITION OF SECTION 124A MAKES IT INVALID

Section 124A of IPC is vaguely worded when it says "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life." The expression "disaffection" includes "disloyalty and all feelings of enmity". Anything which creates disaffection is subjective in nature, it can be interpreted differently. As per the Supreme Court verdict in *Shreya Singal vs Union of India* (2015), the vagueness of law can be a sufficient ground for its invalidation. Such vague laws may trap the innocent by not providing fair warning. Certainly, section 124A of IPC catch dissenters, , critics in media, political opposition, and civil

society representatives who perform the adversarial function so crucial for a healthy democracy. definition of sedition does not take into consideration disaffection towards (a) the Constitution, (b) the legislatures, and (c) administration of justice, all of which would be as disastrous to the security of the State as disaffection towards the executive Government.

9.4 UK HAS SCRAPPED ITS SEDITION LAW

Basically, sedition law was common law offence whereas originated in UK whereas, UK had repealed this law on the ground that such an outdated law interferes with the Human Rights Act 1998. In order to ensure freedom of expression this law was abolished. United States, though it was enacted several federal legislations it has never been invoked by government to suppress the voice of people for quite a long time. On the other hand, India there is a wide spread demand for the repeal of draconian law.

9.5 ALTERNATIVE LAW

An examination of the Indian Penal Code demonstrates that its other provisions are sufficient to address all threats to violence and public order, rendering S.124(A) obsolete. Chapter VIII of the Indian Penal Code contains offences against public tranquillity. Thus, any act that was 'prejudicial to the maintenance of peace & harmony' would be punishable.

9.6 THREAT TO RULE OF LAW AND DEMOCRACY

The government has selectively and vindictively invoked the law of sedition against political opponents students and critiques. Criticism is considered the valve of democracy. It is a safety mechanism for strengthening the rule of law. without free speech, there is no rule of law.

9.7 LAW COMMISSION REPORT

In august 2018, Law commission of India published a consultation paper recommending that it is the time to re-think or repeal the section 124A of IPC. The report is advisable in the interest of protecting the individual fundamental right to freedom of speech and expression.

9.8 APPROACH OF JUDICIARY

In the beginning approach of judiciary was restrictive in nature. There are cases where in court upheld the validity of sedition law. Later deviating from its approach judiciary has adopted liberal interpretation in deciding the issues related to sedition. where there is a liberal interpretation scope for law of sedition hardly arises.

10.0 CONCLUSION

More or less the law of sedition has been used by the authorities to suppress dissent. In the wake of abuse of this law, there has been rise in the demand of doing away with such a draconian law. Countries like England have already repealed this law. United States of America have retained sedition laws but with wider protection to freedom of speech and expression. In India, there are proposals from different sections of the society to repeal such law as this amounts to infringement of freedom of speech and expression. The freedom of speech is the pillar of the democratic government. This freedom is essential for proper functioning of the democratic process. It is the mother of all liberties. It occupies a perfect position in the hierarchy of liberties as it gives protection to all other liberties & it is regarded as first and foremost right in the process of individual's self-development. Freedom of speech plays crucial role in the formation of public opinion on social, political and economic matters and also in constructive criticism or debates, pointing out the loopholes in the policy of the Government. Expressions used in such thoughts might be harsh and unpleasant to some, but that does not render the actions to be branded seditious. Historically and in modern times, sedition law has always been considered contradictory to the freedom of speech and expression. There was a rampant abuse of law of sedition by the government to curb freedom of speech and expression in the recent times especially in India. The tussle between the law of sedition and freedom of speech and expression is ever growing to the extent that it has pressurized our governments to review the law of sedition in the twenty first century. As discussed in the previous chapters, that, in countries like, United Kingdom, we find the abolition of laws of sedition with a view to strengthen the freedom of speech and expression of individuals. In the United States of America we come across with the laws of sedition in statutory books but in order to widen the scope of freedom of speech and press, there has been no prosecution for sedition in the twenty first century. On the other hand, India is still continuing with the British legacy of suppressing every form of dissent by use of sedition laws. Law Commissions in this country has rightly said the expression of frustration over the state of affairs cannot

be treated as sedition and recommended the review of law of sedition. The constitutionality of the Law of Sedition with respect to Freedom of Speech and Expression has been a hot topic of debate in last few years.

It can be said that the foundation of the law of sedition was based on a notion that the 'ruler' and the 'ruled' do not stand on the same footing. Therefore, questions are being raised as to the validity of such a law in the present times, where the relationship between the 'ruler' and 'ruled' has undergone a drastic change. After studying the jurisprudence of this law, it can be concluded that the inclusion of law of sedition has always been politically motivated and to prevent the 'dissent' against the established authority. As a concept, sedition has suffered from infirmities due to lack of a clear-cut definition and varying interpretation by the judiciary. As a concept it is very difficult to determine the scope of sedition. Which statement is seditious and which is not, is determined on the basis of its effect on the audience? The study of the history of law of sedition reveals that the use of this law has been resorted to its peak during the world war, freedom struggles, political uprisings or to control press.

If the law of sedition is viewed from the national legal perspective then the inherited ambiguities in the language used in the section 124A of Indian Penal Code, it is difficult to interpret the terms like 'disaffection', 'hatred' or 'contempt' in the context of the provision. The term 'sedition' is itself not defined in the provision very clearly, and no doubt, what constitutes sedition is defined but with vague and ambiguous words. In India, acts promoting class hatred have been kept outside the purview of offence of sedition and for these specific provisions are carved in the Indian Penal Code. The point here is, in India, sedition is considered as an offence against the government established by law.

The term 'sedition' being a catchy word, is often considered similar to word 'anti-national'. Nationalism as a concept in itself is so wide that it can permeate almost every act in violation of statute, rule or regulation of a nation. In simple terms, nationalism is a feeling of love or affection for one's nation. Again, to quantify this feeling is impossible as it depends upon person to person. There has been a recent trend of imposing sedition charge against those who speak against the policy of the government. However, it is submitted that any act, speech or writing not in the interest of the government cannot be termed as sedition. The explanation appended to the section adds more to the confusion. The explanation simply provides that criticism of the measures of the government, to secure alteration of such measures by peaceful means is not sedition. However, it is very difficult to draw a line between criticism of the

government and the criticism of the measures of the government and even if drawn, it is going to be wavering. The varying interpretation of the law of sedition in India has led to its misuse. The Supreme Court of India upheld the constitutional validity of sedition in respect of freedom of speech and expression and held that the words 'likely to incite violence' to be read into section 124A of Indian Penal Code. An effort to harmonize the two provisions was made in 1962, but, the interpretation of the Supreme Court was not followed in its true sense in the succeeding cases. It has been observed that inheritance of colonial laws gets unconsciously accompanied by its interpretation in the same manner, but, in a different set up. The interpretation of law of sedition was greatly influenced by the British understanding of offence of sedition. The British rulers were always inclined to suppress every voice of dissent without any effort of anticipating its consequences. This can be concluded from the version of trials of sedition held before independence involving prominent leaders struggling for freedom.

If we analyze the history of crimes against the State, it is evident that there is a need for new approach which is consistent with the current legal doctrines and the socio-economic environment.

UK has repealed its sedition law on the ground of overlapping of provisions under other statutes, it become 'defunct' in this country & its presence in statute books pose a threat to the freedom of speech and expression. UK decriminalized sedition in 2009 by passing Coroners and Justice Act. United States of America have continued with sedition law but without there being any prosecution for sedition in the twenty first century. The position in India is facing the pressure from the society to repeal sedition laws being inconsistent with freedom of speech and expression.